

2013 DRAFTING REQUEST

Bill

Received:	9/11/2012	Received By:	rkite
Wanted:	As time permits	Same as LRB:	
For:	Jeffrey Mursau (608) 266-3780	By/Representing:	Tim Gary
May Contact:		Drafter:	rkite
Subject:	Nat. Res. - miscellaneous	Addl. Drafters:	
		Extra Copies:	

Submit via email: **YES**
 Requester's email: **Rep.Mursau@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Regulation of off-highway vehicles

Instructions:

See attached - redraft of 11-0339

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mglass 10/4/2012	evinz 11/6/2012		_____			
/P1	rkite 2/6/2013		jmurphy 11/6/2012	_____	srose 11/6/2012		State S&L
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/P3	rkite	wjackson	jmurphy	_____	sbasford		State

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	5/9/2013	4/9/2013	4/10/2013	_____	4/10/2013		S&L
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/2		evinz 7/31/2013	phenry 8/1/2013	_____ _____	mbarman 8/1/2013	srose 8/13/2013	State S&L

FE Sent For:

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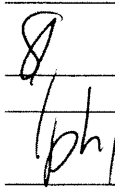
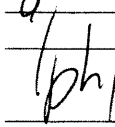
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[Handwritten signature and initials]

Vers. DraftedReviewed
4/9/2013Typed
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FE Sent For:

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FE Sent For:

Handwritten signatures and dates:
 /P3 WJ 4/9
 [Signature] 4/9
 [Signature] 4/10

<END>

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Received: 9/11/2012 Received By: rkite
 Wanted: As time permits Companion to LRB:
 For: Jeffrey Mursau (608) 266-3780 By/Representing: Tim Gary
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 Subject: Nat. Res. - miscellaneous Addl. Drafters:
 Extra Copies:

Submit via email: YES
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 Carbon copy (CC) to:

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/P1			11/6/2012		srose 11/6/2012		State S&L

FE Sent For:

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 2/10/13
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Companion to LRB:

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By/Representing: **Tim Gary**

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/?	rkite	/pl ee 10/17/12 /pl WLj 10/30	/pl ee 11/6/12	JLJm RS 11/6/12			

FE Sent For:

<END>

Kite, Robin

From: Kite, Robin
Sent: Tuesday, September 11, 2012 4:14 PM
To: Rep.Mursau
Cc: Gibson-Glass, Mary
Subject: RE: Draft review: LRB 11-0339/P1 Topic: Off highway vehicle registration and regulation

Tim:

The original drafting instructions were given to me in the form of draft language. I will send a copy of those instructions to your office.

As you know, the law with regard to the operation of UTVs was significantly changed last session. The changes in those laws will affect the redraft of the OHV draft.

I am happy to include an analysis for this redraft but the redraft itself will still be in preliminary form until the questions embedded in the redraft and contained in the drafter's note are addressed. Let me know if you have any other questions.

Robin

From: Rep.Mursau
Sent: Tuesday, September 11, 2012 2:44 PM
To: Kite, Robin; Gibson-Glass, Mary
Subject: FW: Draft review: LRB 11-0339/P1 Topic: Off highway vehicle registration and regulation

Can you please re-draft this for the 2013 legislative session?

Is it possible to get a summary of the bill without answering the questions raised in the drafter's note?

I would like to share it with the DNR.

Is it possible for you to send me the original drafting instructions you received? I was not working for Mursau at the time.

Tim Gary
Office of Rep. Jeff Mursau

From: Basford, Sarah
Sent: Monday, February 07, 2011 12:49 PM
To: Rep.Mursau
Subject: Draft review: LRB 11-0339/P1 Topic: Off highway vehicle registration and regulation

Following is the PDF version of draft LRB 11-0339/P1 and drafter's note.

“RESEARCH APPENDIX”

... Drafting History Reproduction Request Form ...

 **DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN**


(Request Made By: RNK) (Date: 10 / 03 / 12)

Note:

***BOTH DRAFTS SHOULD HAVE THE
SAME “REQUESTOR”***


(exception: companion bills)



☒  Please transfer the drafting file for
2011 LRB 0339 (For: Rep. / Sen. Mursau)
to the drafting file for

2013 LRB 0056 (For: Rep. / Sen. Mursau)

-----OR-----

☐  Please copy the drafting file for
2013 LRB _____ / _____ (include the version) (For: Rep. / Sen. _____)
and place it in the drafting file for

2013 LRB _____ (For: Rep. / Sen. _____)

 Are These “Companion Bills” ?? ... Yes No

If yes, who in the initial requestor’s office authorized the copy/transfer of the drafting history

(“guts”) from the original file: _____



State of Wisconsin
2011 - 2012 LEGISLATURE



rm
not run
0056/P1

LRB-0339/P1
RNK&MGG:kfrs

in
10/3

leaving

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA old
new

PWF

DN

11/6

regen. cat

1 AN ACT *to amend* 23.45 (1) (d), 23.53 (1), 23.56 (1), 23.57 (1) (intro.), 23.58, 23.62
2 (1) (intro.), 30.26 (4) (a) (intro.), 30.26 (4) (b), 78.01 (2) (e), 78.01 (2m) (f), 78.40
3 (1), 110.07 (1) (a) 1., 110.07 (3), 322.111, 340.01 (intro.), 345.11 (1r), 800.02 (2)
4 (b), 885.235 (1m), 895.049, 901.053, 938.17 (1) (intro.), 938.343 (9) and 940.09
5 (3); and *to create* 15.347 (8), 20.370 (1) (iw), 23.34 and 341.059 of the statutes;
6 **relating to:** regulation of off-highway vehicles, creating an off-highway
7 vehicle council, granting rule-making authority, and making appropriations
requiring the exercise of rule-making authority

and providing penalties

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

insert
analysis

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

8

SECTION 1. 15.347 (8) of the statutes is created to read:

9

15.347 (8) OFF-HIGHWAY VEHICLE COUNCIL. There is created in the department

10

of natural resources an off-highway vehicle council consisting of 9 members

appointed for 3-year terms who are knowledgeable in the various recreational uses of off-highway vehicles.

SECTION 2. 20.370 (1) (iw) of the statutes is created to read:

20.370 (1) (iw) Off-highway vehicle fees. All moneys received under s. 23.34

(2) (m) for state off-highway vehicle trails, for state law enforcement operations related to off-highway vehicles, and for grants under s. 23.34 (10).

SECTION 3. 23.34 of the statutes is created to read:

23.34 Off-highway vehicles. (1) DEFINITIONS. In this section:

(ag) "Alcohol beverage" has the meaning given in specified under s. 125.02 (1).

(am) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

(ar) "All-terrain vehicle" has the meaning given in s. 340.01 (2g).

(aw) "Approved public treatment facility" has the meaning given in specified under s.

51.45 (2) (c).

NOTE: Editing note. This definition is a place holder for future penalty provisions.

(b) "Class A off-highway vehicle" means an off-highway vehicle that is eligible for registration under ch. 341.

(c) "Class B off-highway vehicle" means an off-highway vehicle that is exempt not eligible for from registration under ch. 341 as provided under s. 341.10 (6) or (6m).

(cf) "Controlled substance" has the meaning given in specified under s. 961.01 (4).

(ch) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(cm) "Intoxicant" means any alcohol beverage, controlled substance, controlled substance analog, or other drug or any combination thereof.

(cp) "Intoxicated operation of an off-highway vehicle law" means sub. (4c) or a local ordinance in conformity therewith or, if the operation of an off-highway vehicle is involved, s. 940.09 or 940.25.

(1) (d) "Law enforcement officer" has the meaning ^{given in} specified under s. 165.85 (2) (c) and includes a person appointed as a conservation warden by the department under s. 23.10 (1).

(e) "Motorcycle" has the meaning given in s. 340.01 (32).

(f) "Off-highway vehicle" means a 4-wheel drive vehicle that is capable of cross-country travel on natural terrain without the benefit of a road or trail. An

(7) off-highway vehicle does not include an all-terrain vehicle, a watercraft, or a motorcycle, ~~or a utility terrain vehicle~~.

(g) "Off-highway vehicle club" means a club consisting of individuals that promotes the recreational use of off-highway vehicles.

(h) "Off-highway vehicle dealer" means a person engaged in the sale of off-highway vehicles for profit at wholesale or retail.

(i) "Off-highway vehicle distributor" means a person who sells or distributes off-highway vehicles to off-highway vehicle dealers or who maintains distributor representatives.

(j) "Off-highway vehicle manufacturer" means a person engaged in the manufacture of off-highway vehicles for sale to the public.

(k) "Off-highway vehicle renter" means a person engaged in the rental or leasing of off-highway vehicles to the public.

(L) "Off-highway vehicle trail" means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by off-highway vehicle operators by the governmental agency having jurisdiction, but excluding roadways ~~of~~ highways.

stet

1 (m) "Operate" means to exercise physical control over the speed or direction of
2 an off-highway vehicle or to physically manipulate or activate any of the controls of
3 an off-highway vehicle to put it in motion.

4 (mn) "Operation" means the exercise of physical control over the speed or
5 direction of an off-highway vehicle or the physical manipulation or activation of any
6 of the controls of an off-highway vehicle necessary to put it in motion.

7 (n) "Operator" means a person who operates an off-highway vehicle, who is
8 responsible for the operation of an off-highway vehicle, or who is supervising the
9 operation of an off-highway vehicle.

10 (o) "Owner" means a person who has lawful possession of an off-highway
11 vehicle by virtue of legal title or equitable interest in the off-highway vehicle ~~which~~

12 ~~that~~ entitles the person to possession of the off-highway vehicle.

13 (og) "Purpose of authorized analysis" means for the purpose of determining or
14 obtaining evidence of the presence, quantity, or concentration of any intoxicant in a
15 person's blood, breath, or urine.

16 (or) "Refusal law" means sub. (4p) (e) or a local ordinance in conformity
17 therewith.

18 (p) "Registration documentation" means an off-highway vehicle registration
19 certificate or a registration decal.

20 (pm) "Restricted controlled substance" means any of the following:

21 1. A controlled substance included in schedule I under ch. 961 other than a
22 tetrahydrocannabinol.

23 2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled
24 substance described in subd. 1.

25 ~~*** Note:~~

3. Cocaine or any of its metabolites.

1 4. Methamphetamine.

2 5. Delta-9-tetrahydrocannabinol.

3 (q) "Roadway" has the meaning given in s. 340.01 (54).

****NOTE: Please review this definition to ensure that it meets your intent.

4 (r) "Snowmobile" has the meaning given in s. 340.01 (58a).

5 (rm) "Test facility" means a test facility or agency prepared to administer tests
6 under s. 343.305 (2).

7 (s) "Utility terrain vehicle" means a motor driven device, other than a golf cart
8 or low-speed vehicle, that is designed to be used primarily off of a highway and that
9 has, and was originally manufactured with, all of the following:

- 10 1. A gross weight of more than 900 pounds but not more than 1,999 pounds.
- 11 2. Four or more low-pressure tires.
- 12 3. A cargo box or dump box.
- 13 4. A steering wheel.
- 14 5. A tail light.
- 15 6. A brake light.
- 16 7. Two headlights.
- 17 8. A width of not more than 65 inches.
- 18 9. Seats for at least 2 occupants, all of which seating is designed not to be
19 straddled.
- 20 10. A system of seat belts, or a similar system, for restraining each occupant
21 of the device in the event of an accident.
- 22 11. A system of structural members designed to reduce the likelihood that an
23 occupant would be crushed as the result of a rollover of the device.

has the meaning given in s. 23.33(1)(ng)

(2) REGISTRATION. (a) *Requirement.* No person may operate, and no owner may give another person permission to operate, an off-highway vehicle on an off-highway vehicle trail unless the off-highway vehicle is registered ~~as required~~ ^{with} ~~under this subsection~~ ^{the department} or is exempt from registration under this subsection. No person under the age of 18 may register an off-highway vehicle under this subsection.

(b) *Exemptions.* An off-highway vehicle is exempt from registration ~~under par.~~ ^{with}

(a) if any of the following applies:

1. It is owned by this state or a political subdivision of this state and used for enforcement or emergency purposes.

2. It is owned or operated under contract with a utility and operated for the purpose of utility work.

3. It is owned by the United States, another state, or a political subdivision of that state.

(c) *Registration; Class A; fee.* The fee for issuance or renewal of a registration certificate for a Class A off-highway vehicle is \$50.

(d) *Registration; Class B; fee.* The fee for issuance or renewal of a registration certificate for a Class B off-highway vehicle is \$100.

(e) *Registration; commercial owner; fee.* 1. ^A Every person who is an off-highway vehicle manufacturer, off-highway vehicle dealer, off-highway vehicle distributor, or off-highway vehicle renter or any combination thereof engaged in business in this state shall register with the department and obtain from the department a commercial off-highway vehicle certificate.

2. The fee for the issuance or renewal of a commercial off-highway vehicle certificate is \$50 except that the fee for the issuance or renewal of a commercial off-highway vehicle certificate to ^{an off-highway vehicle} a manufacturer is \$150.

****NOTE: Are these commercial registration fee provisions consistent with your intent?

(f) *Other fees.* The fee for the issuance of a duplicate off-highway vehicle registration certificate or decal and the fee for transfer of an off-highway vehicle registration certificate is \$5.

(g) *Effective period.* An off-highway vehicle registration certificate is valid for ^Δ a one-year period.

(h) *Registration; issuers.* For the issuance of original or duplicate registration documentation and for the transfer or renewal of registration documentation, the department may do any of the following:

1. Directly issue, transfer, or renew the registration documentation with or without using the ^{procedures} service specified in par. (j) 1. ^{STET}

2. Appoint persons ^{who are not employees of the department} as agents of the department to issue, transfer, or renew the registration documentation using either or both of the ^{procedures} services specified in par. (j) 1. ^{STET}
^{but set commas}

(i) *Registration; required information.* The department may not issue a registration certificate under this subsection for an off-highway vehicle unless the application for the registration certificate includes the name and address of every owner of the off-highway vehicle.

(j) *Registration; methods of issuance.* 1. For the issuance of original or duplicate registration documentation and for the transfer or renewal of registration documentation, the department may implement either or both of the following

1 procedures to be provided by the department and any agents appointed under par.

2 (h) 2.

3 a. A procedure under which the department or an agent appointed under par.

4 (h) 2. accepts applications for registration documentation and issues a validated
5 registration receipt at the time the applicant submits the application accompanied
6 by the required fees.

7 b. A procedure under which the department or ^{an} agent ^{appointed under par. (h) 2.} may accept applications
8 for registration documentation and issue to each applicant all or some of the items
9 of the registration documentation at the time the applicant submits the application
10 accompanied by the required fees.

11 2. Under either procedure under subd. 1., the applicant shall receive any
12 remaining items of registration documentation directly from the department at a
13 later date. The items of registration documentation issued at the time of the
14 submittal of the application under either procedure shall be sufficient to allow the
15 off-highway vehicle for which the application is submitted to be operated in
16 compliance with the registration requirements under this subsection. The items of
17 registration documentation issued under subd. 1. b. shall include at least one
18 registration decal.

19 (k) *Registration; supplemental fees.* 1. In addition to the applicable fee under
20 par. (c), (d), or (f), each agent appointed under par. (h) 2. shall collect a service fee of
21 \$3 each time the agent issues a validated registration receipt under par. (j) 1. a. The
22 agent shall retain the entire amount of each service fee the agent collects.

23 2. In addition to the applicable fee under par. (c), (d), or (f), the department or
24 the agent appointed under par. (h) 2. shall collect a service fee of \$5 each time the

1 ^{procedure}
2 [^] service under par. (j) 1. b. is provided. The agent shall remit to the department \$1
3 of each service fee the agent collects.

4 (L) *Display.* A person who is issued a registration decal under par. (j) shall affix
5 the decal to the registered off-highway vehicle in such a manner that it may not be
6 removed. The registration decal shall be displayed on the windshield of a registered
7 Class A off-highway vehicle on the upper right passenger side. The registration
8 decal shall be displayed within 2 inches of the right rear brake light on a registered
9 Class B off-highway vehicle.

10 (m) *Use of fees.* All fees remitted to or collected by the department under this
11 subsection shall be credited to the appropriation account under s. 20.370 (1) (iw). (ir)
12 From the amounts appropriated under s. 20.370 (1) (iw), the department shall (ir)
13 expend one-third for state off-highway vehicle trails, one-third for state law
14 enforcement operations related to off-highway vehicles, and one-third for grants
15 under sub. (10).

16 (n) *Rules.* The department may establish by rule additional procedures and
17 requirements for off-highway vehicle registration.

18 (3) DUTIES OF THE OFF-HIGHWAY VEHICLE COUNCIL. (a) The department shall
19 distribute any rule that it is proposing and that affects the operation of off-highway
20 vehicles to each member of the off-highway vehicle council for his or her review and
21 comment at least 20 days before the notice stating that the proposed rule is in final
22 draft form and is submitted to the legislature in the manner provided under s. 227.19
23 (2). A member of the off-highway vehicle council may submit his or her written
24 comments on the proposed rule to the department.

25 (b) 1. Before June 30 of each even-numbered year, the department shall consult
with the off-highway vehicle council on the proposed changes for the succeeding

1 biennium in the appropriations and laws that affect off-highway vehicles or the
2 operation of off-highway vehicles.

3 2. A member of the off-highway vehicle council may submit before August 1 of
4 the even-numbered year his or her written comments on the proposed changes
5 specified in subd. 1. to the secretary of natural resources.

6 (c) The secretary of natural resources shall submit ^{the} ~~any~~ written comments that
7 the secretary receives under par. (b) 2. to the natural resources board and to the
8 secretary of administration with the department's submission of its budget report
9 under s. 16.42.

10 (d) Before March 1 of each odd-numbered year, the off-highway vehicle council
11 shall meet and review the provisions that are included in the executive ^{budget} bill or bills

12 ^{and} that affect off-highway vehicles or the operation of off-highway vehicles. A
13 member of the off-highway vehicle council may submit his or her written comments
14 on these provisions to the secretary of natural resources before March 10 of each
15 odd-numbered year.

16 (e) The secretary of natural resources shall submit the written comments that
17 he or she receives under par. (b) 2. or (d) before March 10 of the odd-numbered year
18 to the cochairpersons of the joint committee on finance before March 15 of that
19 odd-numbered year.

****NOTE: These provisions are based on the snowmobile council provisions. Do
they meet your intent?

20 (4) OPERATION OF OFF-HIGHWAY VEHICLES. (a) *Operator's license required.* No
21 person may operate an off-highway vehicle unless the person possesses a valid
22 operator's license issued under ch. 343.

1 (b) *General restrictions.* No person may operate an off-highway vehicle in the
2 following manner:

3 1. On public property except ^{on} an off-highway vehicle trail that is posted as open
4 to the operation of off-highway vehicles.

5 ~~*See Note To it your intent that~~
6 2. On the private property of another without the consent of the owner or lessee.

7 Failure to post private property does not imply consent for off-highway vehicle use.

8 3. In a willful or wanton manner, or with reckless disregard for the safety of
9 persons or property.

* ^{From e} ~~than~~ [^] ~~the~~ [^] ~~standard~~ [^] ~~under the ATV law,~~ [^] ~~see s.~~
23.33 (3) (a), stats. You may wish to change the standard so that it is consistent with the
ATV law.

10 4. On Indian lands without the consent of the tribal governing body or Indian
11 owner. Failure to post Indian lands does not imply consent for off-highway vehicle
12 use.

13 5. With any firearm in his or her possession unless it is unloaded and enclosed
14 in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case.

15 ~~6.~~ ^{8.} To drive or pursue any animal except as part of normal farming operations
16 involving the driving of livestock.

17 ~~7.~~ ^{9.} Except as provided in subd. ~~8.~~ ^{10.} at a speed exceeding 20 miles per hour.

18 ~~8.~~ ^{10.} When within 150 feet of a dwelling, at a speed exceeding 10 miles per hour.

19 ~~9.~~ ^{11.} In a manner that violates rules promulgated by the department.

20 (c) *Restrictions on public land; department requirements.* 1. No person may
21 operate an off-highway vehicle on land under the jurisdiction or control of the
22 department, or in a county forest, as defined in s. 28.11 (2), except on trails
23 designated by the department, by posted notice, as open for use by off-highway
vehicles.

INS.
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SECTION 3

2. The department shall establish seasons during which a person may operate an off-highway vehicle on designated trails in state forest lands.

3. The department shall prepare maps that identify each off-highway vehicle trail in this state.

***NOTE: Do you want to establish a deadline by which DNR must prepare the maps? Should DNR be required to make the maps available on the DNR Web site or make them available in some other manner? *Internet*

(4c) INTOXICATED OPERATION OF AN OFF-HIGHWAY VEHICLE. (a) Operation. 1. No person may operate an off-highway vehicle while under the influence of an intoxicant.

2. No person may engage in the operation of an off-highway vehicle while the person has an alcohol concentration above 0.0.

3. ~~2m.~~ No person may engage in the operation of an off-highway vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood. *stat*

4. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., or 3. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., or 3., the offenses shall be joined. If the person is found guilty of any combination of subd. 1., 2., or 3. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing. Subdivisions 1., 2., and 3. each require proof of a fact for conviction ~~when~~ *that* the others do not require.

***NOTE: For now, I have omitted language as to how convictions are to be counted as prior violations. See the accompanying drafter's note.

5. In an action under subd. 2m. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or

1 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
2 or she proves by a preponderance of the evidence that at the time of the incident or
3 occurrence he or she had a valid prescription for methamphetamine or one of its
4 metabolic precursors, gamma-hydroxybutyric acid, or
5 delta-9-tetrahydrocannabinol.

6 (b) *Causing injury.* 1. No person while under the influence of an intoxicant may
7 cause injury to another person by the operation of an off-highway vehicle.

8 2. No person who has an alcohol concentration above 0.0 may cause injury to
9 another person by the operation of an off-highway vehicle.

10 3. ^{2m} No person who has a detectable amount of a restricted controlled substance
11 in his or her blood may cause injury to another person by the operation of an
12 off-highway vehicle.

13 4. ^{3.} A person may be charged with and a prosecutor may proceed upon a
14 complaint based upon a violation of any combination of subd. 1., 2., or ^{3.} 2m for acts
15 arising out of the same incident or occurrence. If the person is charged with violating
16 any combination of subd. 1., 2., or ^{3.} 2m in the complaint, the crimes shall be joined
17 under s. 971.12. If the person is found guilty of any combination of subd. 1., 2., or ^{3.} 2m 3.
18 for acts arising out of the same incident or occurrence, there shall be a single
19 conviction for purposes of sentencing. Subdivisions 1., 2., and ^{3.} 2m each require proof
20 of a fact for conviction ^{that} ~~when~~ the others do not require.

****NOTE: For now, I have omitted language as to how convictions are to be counted
as prior violations. See the accompanying drafter's note.

21 5. ^{4.} a. In an action under this paragraph, the defendant has a defense if he or she
22 proves by a preponderance of the evidence that the injury would have occurred even
23 if he or she had been exercising due care and he or she had not been under the

1 influence of an intoxicant, did not have an alcohol concentration of more than 0.0, or
2 did not have a detectable amount of a restricted controlled substance in his or her
3 blood.

4 b. In an action under subd. ^{3.} ~~2a~~ that is based on the defendant allegedly having
5 a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or
6 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he
7 or she proves by a preponderance of the evidence that at the time of the incident or
8 occurrence he or she had a valid prescription for methamphetamine or one of its
9 metabolic precursors, gamma-hydroxybutyric acid, or
10 delta-9-tetrahydrocannabinol.

11 (4g) PRELIMINARY BREATH SCREENING TEST. (a) *Requirement.* A person shall
12 provide a sample of his or her breath for a preliminary breath screening test if a law
13 enforcement officer has probable cause to believe that the person is violating or has
14 violated the intoxicated operation of an off-highway vehicle law and if, prior to an
15 arrest, the law enforcement officer requested the person to provide this sample.

16 (b) *Use of test results.* A law enforcement officer may use the results of a
17 preliminary breath screening test ~~for the purpose of deciding whether or not to arrest~~ ^{to decide whether} STEP
18 a person for a violation of the intoxicated operation of an off-highway vehicle law or
19 ~~for the purpose of deciding whether or not to request a chemical test under sub. (4p).~~ ^{to decide whether} STEP
20 Following the preliminary breath screening test, chemical tests may be required of
21 the person under sub. (4p).

22 (c) *Admissibility.* The result of a preliminary breath screening test is not
23 admissible in any action or proceeding except to show probable cause for an arrest,
24 if the arrest is challenged, or to show that a chemical test was properly required of
25 a person under sub. (4p).

1 (d) *Refusal*. There is no penalty for a violation of par. (a). Subsection (13)(a) and the general penalty provision under s. 939.61 do not apply to that violation.

2
3 (4j) APPLICABILITY OF THE INTOXICATED OPERATION OF AN OFF-HIGHWAY LAW. (a) ^{VEHICLE}
4 Except as provided in par. (b), the intoxicated operation of an off-highway vehicle law
5 is applicable to all ice-bound waters of this state and to all premises held out to the
6 public for use of off-highway vehicles, whether such premises are publicly or
7 privately owned and whether or not a fee is charged for the use thereof.

8 (b) The intoxicated operation of an off-highway vehicle law is not applicable
9 to the highways of this state and to any other areas to which s. 346.63 (1) or (2m),
10 346.63 (2) or (6), 940.09 (1), or 940.25 applies or a local ordinance in conformity with
11 s. 346.63 (1) or (2m) applies.

12 (4L) IMPLIED CONSENT. Any person who engages in the operation of an
13 off-highway vehicle on those areas enumerated in sub. (4j) (a) is deemed to have
14 given consent to provide one or more samples of his or her breath, blood, or urine for
15 the purpose of authorized analysis as required under sub. (4p). Any person who
16 engages in the operation of an off-highway vehicle on those areas enumerated in sub.
17 (4j) (a) is considered to have given consent to submit to one or more chemical tests
18 of his or her breath, blood, or urine for the purpose of authorized analysis as required
19 under sub. (4p).

20 (4p) CHEMICAL TESTS. (a) *Requirement*. 1. A person shall provide one or more
21 samples of his or her breath, blood, or urine for the purpose of authorized analysis
22 if he or she is arrested for a violation of the intoxicated operation of an off-highway
23 vehicle law and if he or she is requested to provide the sample by a law enforcement
24 officer. A person shall submit to one or more chemical tests of his or her breath, blood,
25 or urine for the purpose of authorized analysis if he or she is arrested for a violation

1 of the intoxicated operation of an off-highway vehicle law and if he or she is
2 requested to submit to the test by a law enforcement officer.

3 2. A law enforcement officer requesting a person to provide a sample or to
4 submit to a chemical test under subd. 1. shall inform the person of all of the following
5 at the time of the request and prior to obtaining the sample or administering the test:

6 a. That he or she is deemed to have consented to tests under sub. (4L).

7 b. That a refusal to provide a sample or to submit to a chemical test constitutes
8 a violation under par. (e) and is subject to the same penalties and procedures as a
9 violation of sub. (4c) (a) 1.

10 c. That in addition to the designated chemical test under par. (b) 2., he or she
11 may have an additional chemical test under par. (c) 1.

12 3. A person who is unconscious or otherwise not capable of withdrawing
13 consent is presumed not to have withdrawn consent under this paragraph, and if a
14 law enforcement officer has probable cause to believe that the person violated the
15 intoxicated operation of an off-highway vehicle law, one or more chemical tests may
16 be administered to the person without a request under subd. 1. and without
17 providing information under subd. 2.

18 (b) *Chemical tests.* 1. Upon the request of a law enforcement officer, a test
19 facility shall administer a chemical test of breath, blood, or urine for the purpose of
20 authorized analysis. A test facility shall be prepared to administer 2 of the 3
21 chemical tests of breath, blood, or urine for the purpose of authorized analysis. The
22 department may enter into agreements for the cooperative use of test facilities.

23 2. A test facility shall designate one chemical test of breath, blood, or urine
24 ~~that~~ ^{which} it is prepared to administer first for the purpose of authorized analysis.

1 3. A test facility shall specify one chemical test of breath, blood, or urine, other
2 than the test designated under subd. 2., ^{that} ~~which~~ it is prepared to administer for the
3 purpose of authorized analysis as an additional chemical test.

4 4. A chemical test of blood or urine conducted for the purpose of authorized
5 analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of
6 the laboratory of hygiene, department of health services, and department of
7 transportation under s. 343.305 (6) apply to a chemical test of blood or urine
8 conducted for the purpose of authorized analysis under this subsection. Blood may
9 be withdrawn from a person arrested for a violation of the intoxicated operation of
10 an off-highway vehicle law only by a physician, registered nurse, medical
11 technologist, physician assistant, or person acting under the direction of a physician
12 ~~and~~ ^{Cap} the person who withdraws the blood, the employer of that person, and any
13 hospital where blood is withdrawn have immunity from civil or criminal liability as
14 provided under s. 895.53.

15 5. A test facility ^{that} ~~which~~ administers a chemical test of breath, blood, or urine
16 for the purpose of authorized analysis under this subsection shall prepare a written
17 report, [↓] which shall include the findings of the chemical test, the identification of the
18 law enforcement officer or the person who requested a chemical test, ^{and} the
19 identification of the person who provided the sample or submitted to the chemical
20 test. The test facility shall transmit a copy of the report to the law enforcement officer
21 and the person who provided the sample or submitted to the chemical test.

22 (c) *Additional and optional chemical tests.* 1. If a person is arrested for a
23 violation of the intoxicated operation of an off-highway vehicle law or is the operator
24 of an off-highway vehicle involved in an accident resulting in great bodily harm to
25 or the death of someone and if the person is requested to provide a sample or to

1 submit to a test under par. (a) 1., the person may request the test facility to
2 administer the additional chemical test specified under par. (b) 3. or may request, at
3 his or her own expense, a reasonable opportunity to have any qualified person
4 administer a chemical test of his or her breath, blood, or urine for the purpose of
5 authorized analysis.

6 2. If a person is arrested for a violation of the intoxicated operation of an
7 off-highway vehicle law and if the person is not requested to provide a sample or to
8 submit to a test under par. (a) 1., the person may request the test facility to
9 administer a chemical test of his or her breath or may request, at his or her own
10 expense, a reasonable opportunity to have any qualified person administer a
11 chemical test of his or her breath, blood, or urine for the purpose of authorized
12 analysis. If a test facility is unable to perform a chemical test of breath, the person
13 may request the test facility to administer the designated chemical test under par.
14 (b) 2. or the additional chemical test under par. (b) 3.

15 3. A test facility shall comply with a request under this paragraph to
16 administer any chemical test it ~~is able to~~ perform.

17 4. The failure or inability of a person to obtain a chemical test at his or her own
18 expense does not preclude the admission of evidence of the results of a chemical test
19 required and administered under pars. (a) and (b).

20 (d) *Admissibility; effect of test results; other evidence.* The results of a chemical
21 test required or administered under par. (a), (b), or (c) are admissible in any civil or
22 criminal action or proceeding arising out of the acts committed by a person alleged
23 to have violated the intoxicated operation of an off-highway vehicle law on the issue
24 of whether the person was under the influence of an intoxicant or the issue of
25 whether the person had alcohol concentrations above specified levels or a detectable

1 amount of a restricted controlled substance in his or her blood. Results of these
2 chemical tests shall be given the effect required under s. 885.235. This subsection
3 does not limit the right of a law enforcement officer to obtain evidence by any other
4 lawful means.

5 (e) *Refusal*. No person may refuse a lawful request to provide one or more
6 samples of his or her breath, blood, or urine or to submit to one or more chemical tests
7 under par. (a). A person shall not be considered to have refused to provide a sample
8 or to submit to a chemical test if it is shown by a preponderance of the evidence that
9 the refusal was due to a physical inability to provide the sample or to submit to the
10 test due to a physical disability or disease unrelated to the use of an intoxicant.
11 Issues in any action concerning violation of par. (a) or this paragraph are limited to
12 the following:

13 1. Whether the law enforcement officer had probable cause to believe the
14 person was violating or had violated the intoxicated operation of an off-highway
15 vehicle law.

16 2. Whether the person was lawfully placed under arrest for violating the
17 intoxicated operation of an off-highway vehicle law.

18 3. Whether the law enforcement officer requested the person to provide a
19 sample or to submit to a chemical test and provided the information required under
20 par. (a) 2. or whether the request and information ^{Were} ~~was~~ unnecessary under par. (a) 3.

21 4. Whether the person refused to provide a sample or to submit to a chemical
22 test.

23 (4t) REPORT ARREST TO DEPARTMENT. If a law enforcement officer arrests a person
24 for a violation of the intoxicated operation of an off-highway vehicle law or the

1 refusal law, the law enforcement officer shall notify the department of the arrest as
2 soon as practicable.

3 **(4x)** OFFICER'S ACTION AFTER ARREST FOR OPERATING AN OFF-HIGHWAY VEHICLE
4 WHILE UNDER INFLUENCE OF INTOXICANT. A person arrested for a violation of sub. (4c)
5 (a) [✓]1. or [✓]2. or a local ordinance in conformity therewith or sub. (4c) (b) [✓]1. or [✓]2. may
6 not be released until 12 hours have elapsed from the time of his or her arrest or unless
7 a chemical test administered under sub. (4p) (a) [✓]1. shows that the person has an
8 alcohol concentration of 0.05 or less, but the person may be released to his or her
9 attorney, spouse, relative, or other responsible adult at any time after arrest.

10 **(4z)** PUBLIC EDUCATION PROGRAM. (a) The department shall promulgate rules
11 to provide for a public education program to do all of the following:

12 1. Inform off-highway vehicle operators of the prohibitions and penalties
13 included in the intoxicated operation of an off-highway vehicle law.

14 2. Provide for the development of signs briefly explaining the intoxicated
15 operation of an off-highway vehicle law.

16 (b) The department shall develop and issue an educational pamphlet on the
17 intoxicated operation of an off-highway vehicle law to be distributed, beginning
18 within 6 months after the effective date of this [✓]paragraph [LRB inserts date], to
19 persons issued off-highway vehicle registration certificates under [✓]sub. ²(2).

20 **(5)** EQUIPMENT REQUIREMENTS. No person may operate a Class B off-highway
21 vehicle unless it meets all of the following requirements:

22 (a) It has a minimum of 4 wheels and is propelled by those wheels using an
23 electric or internal combustion engine.

24 (b) If it is equipped with an internal combustion engine, it has a complete
25 exhaust system that includes a muffler and a tail pipe.

1 (c) It has a permanently mounted and attached fuel cell or tank.

2 (d) It has a frame[^] mounted roll cage that is constructed in a manner specified
3 by the department by rule and that encloses the operator and each passenger.

4 (e) It has a permanently affixed blaze orange safety flag that is at least 144
5 square inches in size and that is displayed at least 8 feet above the ground on the
6 front passenger side of the off-highway vehicle.

****NOTE: Isn't it possible that an off-highway vehicle could be less than 8 feet
above the ground?

7 (f) It has 2 functioning headlights.

8 (g) It has 2 functioning brake lights.

9 (h) It has functioning front and rear turn signals.

10 (i) It has functioning side markers on the front and rear driver and passenger
11 sides.

12 (j) All of the seats are permanently mounted and equipped with shoulder and
13 lap safety belts.

14 (k) It does not contain an infant or child seat.

15 (L) It is equipped with an unopened spill kit approved by the Wisconsin
16 Off-Highway Vehicle Association.

****NOTE: The term "spill kit" should be defined.

17 (m) It has a battery that is permanently secured in the vehicle.

****NOTE: This provision seems to suggest that the battery in the vehicle cannot be
replaced. Is this correct?

18 (6) NOISE LIMITS. No person may manufacture, sell, rent, or operate an
19 off-highway vehicle that is constructed in such a manner that noise emitted from the
20 off-highway vehicle exceeds 96 decibels on the A scale as measured in the manner
21 prescribed under rules promulgated by the department.

* ****NOTE: This provision is based on the ATV noise limits. O.K.?

and UTV

1 (7) ACCIDENTS. If an accident results in the death of any person, in the injury
2 of any person that requires the treatment of the person by a physician, or in property
3 damage of \$500 or more, the operator of each off-highway vehicle involved in the
4 accident shall, within 10 days of the date of the accident, provide a report of the
5 accident to the department in the form and manner required by the department by
6 rule.

7 (8) TRAILS. (a) *Department authority.* The department shall encourage and
8 supervise a system of off-highway vehicle trails. The department may establish
9 standards and procedures for certifying the designation of off-highway vehicle
10 trails.

11 (b) *Designation.* A town, village, city, county, or the department may designate
12 corridors through land ~~which~~ ^{that} it owns or controls, or for which it obtains leases,
13 easements, or permission, for use as off-highway vehicle trails.

14 (c) *Restrictions.* The designating authority may specify effective periods for the
15 use of off-highway vehicle trails and may restrict or prohibit the operation of an
16 off-highway vehicle during certain periods of the year.

17 (d) *Signs.* The department, in cooperation with the department of
18 transportation, shall establish uniform off-highway vehicle trail signs and
19 standards.

20 (e) *Interference with signs and standards prohibited.* 1. No person may
21 intentionally remove, damage, deface, move, or obstruct any uniform off-highway
22 vehicle trail sign or standard or intentionally interfere with the effective operation
23 of any uniform off-highway vehicle trail sign or standard if the sign or standard is
24 legally placed by the state, any municipality, or any authorized individual.

1 2. No person may possess any uniform off-highway vehicle trail sign or
2 standard of the type established by the department for the warning, instruction, or
3 information of the public, unless he or she obtained the uniform off-highway vehicle
4 trail sign or standard in a lawful manner. Possession of a uniform off-highway
5 vehicle trail sign or standard creates a rebuttable presumption of illegal possession.

6 **(9) AGE RESTRICTIONS FOR OPERATION; SAFETY CERTIFICATE REQUIREMENTS.** (a) No
7 person under the age of 16 may operate an off-highway vehicle on an off-highway
8 vehicle trail.

9 (b) No person who is 16 or 17 years of age may do any of the following:

10 1. Operate an off-highway vehicle on an off-highway vehicle trail without
11 wearing protective headgear of the type required under s. 347.485 (1) (a) and with
12 the chin strap properly fastened.

13 2. Operate an off-highway vehicle on an off-highway vehicle trail unless he or
14 she is accompanied by another off-highway vehicle that is operated by a person who
15 is at least 18 years of age.

* ****NOTE: What does "accompanied" mean in this context? For example, see s.
23.33 (1) (a) and (5) (a).

(and family)

16 (c) No person who is born on or after December 31, 1993, may operate an
17 off-highway vehicle on an off-highway vehicle trail unless he or she holds a valid
18 safety certificate issued under par. (d).

19 (d) The department shall establish or supervise the establishment of a program
20 of instruction on off-highway vehicle laws, including the intoxicated operation of an
21 off-highway vehicle law, regulations, safety, and related subjects. The department
22 shall establish by rule an instruction fee for this program. The department shall
23 issue certificates to persons successfully completing the program. An instructor

1 conducting the program of instruction under this paragraph shall collect the fee from
2 each person who receives instruction. The department may determine the portion
3 of this fee, which may not exceed 50 percent, that the instructor may retain to defray
4 expenses incurred by the instructor in conducting the program. The instructor shall
5 remit the remainder of the fee or, if nothing is retained, the entire fee to the
6 department. The department shall issue a duplicate certificate of accomplishment
7 to a person who is entitled to a duplicate certificate of accomplishment and who pays
8 a fee of \$5.

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24-8 → (10) GRANT PROGRAM. (a) The department shall establish a program to award
9 grants to organizations that meet the eligibility requirements under par. (b).
10

11 (b) To be eligible for a grant under this subsection, an organization shall meet
12 all of the following requirements:

- 13 1. The organization is a nonstock corporation organized in this state.
- 14 2. The organization promotes the operation of off-highway vehicles in a
15 manner that is safe and responsible and that does not harm the environment.
- 16 3. The organization promotes the operation of off-highway vehicles in a
17 manner that does not conflict with the laws, rules, and departmental policies that
18 relate to the operation of off-highway vehicles.
- 19 4. The interest of the organization is limited to the recreational operation of
20 off-highway vehicles on off-highway vehicle trails and other areas that are off of the
21 highways.
- 22 5. The organization has a board of directors that has a majority of members who
23 are representatives of off-highway vehicle clubs.
- 24 6. The organization provides support to off-highway vehicle clubs.

1 (c) An organization receiving a grant under this subsection shall use the grant
2 moneys to promote and provide support to the program established under sub. (9) (d)
3 by conducting activities that include all of the following:

4 1. Collecting data on the recreational operation of off-highway vehicles off of
5 the highways.

6 2. Providing assistance to the department in locating, recruiting, and training
7 instructors for the program established under sub. (9) (d).

8 3. Attempting to increase participation by current and future off-highway
9 vehicle operators and owners in the program established under sub. (9) (d).

10 4. In consultation with the department of natural resources and the
11 department of tourism, creating an outreach program to inform local communities
12 of appropriate off-highway vehicle use in their communities and of the economic
13 benefits that may be gained from promoting tourism to attract off-highway vehicle
14 operators.

15 5. Attempting to improve and maintain its relationship with the department
16 of natural resources, the department of tourism, off-highway vehicle dealers,
17 off-highway vehicle manufacturers, all-terrain vehicle clubs, as defined in s. 23.33
18 (1) (bc), snowmobile clubs, as defined in s. 350.138 (1) (e), snowmobile alliances, as
19 defined in s. 350.138 (1) (d), and other organizations that promote the recreational
20 operation of all-terrain vehicles and snowmobiles.

21 6. Recruiting, assisting in the training of, and providing support to a corps of
22 volunteers that will assist in providing instruction on the safe and responsible
23 operation of off-highway vehicles that is given in the field to off-highway vehicle
24 operators.

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25-20

1 7. Publishing a manual in cooperation with the department to be used to train
2 volunteers in monitoring the recreational operation of off-highway vehicles for
3 safety issues and other issues that relate to the responsible operation of off-highway
4 vehicles.

5 (d) The department shall pay the grants from the appropriation under s. 20.370

6 (5) (cz). (1) (ir)

7 (11) DAMAGE CLAIM PROGRAM. The department shall establish, by rule, a
8 program to pay claims to owners of property damaged by the unauthorized operation
9 of off-highway vehicles. The rules shall specify eligibility requirements and
10 procedures for obtaining a payment under the program. The department shall make
11 payments under this subsection from the appropriation under s. 20.370 (?) (?).

****NOTE: How should this program be funded?

12 (12) LOCAL ORDINANCES. (a) Counties, towns, cities, and villages may enact
13 ordinances regulating off-highway vehicles on off-highway vehicle trails
14 maintained or designated by the county, city, town, or village.

15 (b) Any county, town, city, or village may enact an ordinance that is in strict
16 conformity with this section and rules promulgated by the department under this
17 section if the ordinance encompasses all aspects encompassed by this section.

18 (13) ENFORCEMENT. (a) An officer of the state traffic patrol under s. 110.07 (1),
19 inspector under s. 110.07 (3), conservation warden appointed by the department
20 under s. 23.10, county sheriff, or municipal peace officer has authority and
21 jurisdiction to enforce this section and ordinances enacted in accordance with this
22 section.

1 (b) No operator of an off-highway vehicle required to be registered under this
2 section may refuse to stop after being requested or signaled to do so by a law
3 enforcement officer or a commission warden, as defined in s. 939.22 (5).

4 (14) PENALTIES. (a) *General penalties.* Any person who violates this section
5 shall forfeit not less than \$250 for a first violation, not less than \$500 for a 2nd
6 violation, and not less than \$1,000 for a 3rd or subsequent violation.

****NOTE: These penalties should also include a maximum amount for each
violation. Also, do you want to specify that for the purpose of "counting" a violation, the
later violation must have been committed within a specified period after the previous
violation was committed?

7 (b) *Safety certificate requirement.* In addition to the penalties under par. (a), the
8 court shall require any person who violates this section to successfully complete the
9 program of instruction on off-highway vehicle laws established by the department
10 under sub. (9) (d), regardless of whether the person has previously successfully
11 completed the program.

12 (c) *Restoration or replacement of signs and standards.* In addition to any other
13 penalty, the court may order the defendant to restore or replace any uniform
14 off-highway vehicle trail sign or standard that the defendant removed, damaged,
15 defaced, moved, or obstructed.

16 SECTION 4. 23.45 (1) (d) of the statutes is amended to read:

17 23.45 (1) (d) "Registration" means any registration documentation, as defined
18 in s. 23.33 (1) (jn), ~~23.34 (1) (p)~~, or s. 350.01 (10t), or certification or registration
19 documentation, as defined in s. 30.50 (3b), issued by the department or its agents.

20 SECTION 5. 23.53 (1) of the statutes is amended to read:

21 23.53 (1) The citation created under this section shall, in all actions to recover
22 forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of
23 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated

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27-19

thereunder, and any rule of the Kickapoo reserve management board under s. 41.41 (7) (k) be used by any law enforcement officer with authority to enforce those laws, except that the uniform traffic citation created under s. 345.11 may be used by a traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law enforcement agency of a municipality or county or a traffic officer employed under s. 110.07 in enforcing s. 287.81. In accordance with s. 345.11 (1m), the citation shall not be used for violations of ch. 350 relating to highway use. The citation may be used for violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am), ~~23.33 (12)~~¹, or 30.77.

SECTION 6. ~~23.56 (1)~~¹ of the statutes is amended to read:

23.56 (1) A person may be arrested for a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am), ~~23.33 (12)~~¹, or 30.77, after a warrant that substantially complies with s. 968.04 has been issued. Except as provided in sub. (2), the person arrested shall be brought without unreasonable delay before a court having jurisdiction to try the action.

SECTION 7. ~~23.57 (1)~~¹ (intro.) of the statutes is amended to read:

23.57 (1) (intro.) A person may be arrested without a warrant when the arresting officer has probable cause to believe that the person is committing or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am), ~~23.33 (12)~~¹, or 30.77; and:

SECTION 8. ~~23.58~~¹ of the statutes is amended to read:

1 **23.58 Temporary questioning without arrest.** After having identified
2 himself or herself as an enforcing officer, an enforcing officer may stop a person in
3 a public place for a reasonable period of time when the officer reasonably suspects
4 that such person is committing, is about to commit or has committed a violation of
5 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated
6 thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7)
7 (k), or any local ordinances enacted by any local authority in accordance with s. 23.33
8 (11) (am), ~~23.33~~^{✓ 1} (12), or 30.77. Such a stop may be made only where the enforcing
9 officer has proper authority to make an arrest for such a violation. The officer may
10 demand the name and address of the person and an explanation of the person's
11 conduct. Such detention and temporary questioning shall be conducted in the
12 vicinity where the person was stopped.

13 **SECTION 9.** ~~23.62~~[✓] (1) (intro.) of the statutes is amended to read:

14 23.62 (1) (intro.) Whenever an enforcing officer has probable cause to believe
15 that a person subject to his or her authority is committing or has committed a
16 violation of those statutes enumerated in s. 23.50 (1), any administrative rules
17 promulgated thereunder, any rule of the Kickapoo reserve management board under
18 s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance
19 with s. 23.33 (11) (am), ~~23.33~~^{✓ 1} (12), or 30.77, the officer may proceed in the following
20 manner:

21 **SECTION 10.** ~~30.26~~[✓] (4) (a) (intro.) of the statutes is amended to read:

22 30.26 (4) (a) (intro.) The department may not prohibit the crossing of a bridge
23 over a wild river by an all-terrain vehicle, ^{or utility terrain vehicle} traveling on an all-terrain vehicle trail, ^{plain}
24 as defined under s. 23.33 (1) (d), by an off-highway vehicle traveling on an
25 off-highway vehicle trail, as defined under s. 23.33^{✓ 1} (1) (L), or by a snowmobile

traveling on a snowmobile trail, as defined under s. 350.01 (17) that is constructed in any of the following locations:

SECTION 11. 30.26 (4) (b) of the statutes is amended to read:

30.26 (4) (b) The state shall permit all-terrain vehicles and snowmobiles to travel in a corridor across any state land that separates an all-terrain vehicle trail or a snowmobile trail and the bridges constructed at the locations listed under par. (a).

***NOTE: Do you want to amend this provision to include off-highway vehicles?

SECTION 12. 78.01 (2) (e) of the statutes is amended to read:

78.01 (2) (e) Gasoline sold for nonhighway use in mobile machinery and equipment; other than use in a snowmobile, an all-terrain vehicle that is not registered for private use under s. 23.33 (2) (d), a Class B off-highway vehicle registered under s. 23.34, or a recreational motorboat; and delivered directly into the consumer's storage tank in an amount of not less than 100 gallons.

SECTION 13. 78.01 (2m) (f) of the statutes is amended to read:

78.01 (2m) (f) It is dyed diesel fuel and is sold for off-highway use other than use in a snowmobile, an all-terrain vehicle that is not registered for private use under s. 23.33 (2) (d) or (2g), a Class B off-highway vehicle registered under s. 23.34, or ~~in~~ a recreational motorboat or if no claim for a refund for the tax on the diesel fuel may be made under s. 78.75 (1m) (a) 3.

SECTION 14. 78.40 (1) of the statutes is amended to read:

78.40 (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax at the rate determined under ss. 78.405 and 78.407 is imposed on the use of alternate fuels. The tax, with respect to all alternate fuel delivered by an alternate fuel dealer into supply tanks of motor vehicles in this state, attaches at the time of delivery and shall be

1 collected by the dealer from the alternate fuels user and shall be paid to the
2 department. The tax, with respect to alternate fuels acquired by any alternate fuels
3 user other than by delivery by an alternate ~~fuel~~ ^{fuels} dealer into a fuel supply tank of a
4 motor vehicle, or of a snowmobile, an all-terrain vehicle ^{or utility terrain vehicle} that is not registered for ^{plain}
5 private use under s. 23.33 (2) (d) or (2g), a Class B off-highway vehicle registered
6 under s. 23.34 ^{✓ 1} or a recreational motorboat, attaches at the time of the use of the fuel
7 and shall be paid to the department by the user. The department may permit any
8 supplier of alternate fuels to report and pay to the department the tax on alternate
9 fuels delivered into the storage facility of an alternate fuels user or retailer which will
10 be consumed for alternate fuels tax purposes or sold at retail.

INS. 31-10
11 SECTION 15. 110.07 (1) (a) 1. of the statutes is amended to read:

12 110.07 (1) (a) 1. Enforce and assist in the administration of this chapter and
13 chs. 194, 218, 341 to 349 and 351, and ss. 23.33, 23.34 ^{✓ 1}, 125.07 (4) (b), 125.085 (3) (b),
14 167.31 (2) (b) to (d) and 287.81 and ch. 350 where applicable to highways, or orders
15 or rules issued pursuant thereto.

16 SECTION 16. 110.07 (3) of the statutes is amended to read:

17 110.07 (3) The secretary may employ inspectors who may not wear the uniform
18 of the state patrol, whose duties shall be to enforce and assist in administering s.
19 346.63, this chapter and chs. 194, 218, 340 to 345 and 347 to 351, s. ss. 23.33, and
20 23.34 ^{✓ 1}, the inspection requirements of s. 121.555 (2) (b) and the requirements under
21 s. 346.45 (4) for vehicles being used to transport hazardous materials. Such
22 inspectors, in the performance of these duties, shall have the powers and authority
23 of state traffic officers. For the purpose of death, disability and retirement coverage,
24 such inspectors shall be subject to ch. 40 as is the state traffic patrol. Subject to sub.

utility terrain vehicle, ^{plain}

(5), the secretary may clothe and equip inspectors as the interest of public safety and their duties require.

SECTION 17. 322.111 of the statutes is amended to read:

322.111 Article 111 — Drunken or reckless operation of an all-terrain

vehicle, ^{plain} ~~off-highway vehicle~~, vehicle, snowmobile, aircraft, or vessel. Any

person who violates s. 23.33 (3) (a) or (4c), ~~23.34 (4) (a) or (4c)~~, 30.68, 30.681, 114.09,

346.62, 346.63 (1) or (2), 350.10 (1) (b), 350.101, 940.25, or 940.09 where the offense

involved the operation or physical control of an aircraft, all-terrain vehicle,

~~off-highway vehicle~~, snowmobile, vehicle or vessel on or off a highway shall be

punished as the court-martial may direct.

SECTION 18. 340.01 (intro.) of the statutes is amended to read:

~~340.01 Words and phrases defined. (intro.) In s. ss. 23.33 and 23.34 and chs. 340 to 349 and 351, the following words and phrases have the designated meanings unless a different meaning is expressly provided or the context clearly indicates a different meaning:~~

SECTION 19. 341.059 of the statutes is created to read:

341.059 Off-highway vehicles. Class B off-highway vehicles, as defined in

s. 23.34 (1) (c), are not required to be registered under this chapter but shall be

registered under s. 23.36 (2).

SECTION 20. 345.11 (1r) of the statutes is amended to read:

345.11 (1r) The uniform traffic citation or the citation form under s. 23.54 shall

be used for violations of s. ss. 23.33 and 23.34 relating to highway use or ordinances

enacted in accordance with ~~that section~~ ^{those sections} if the violation is committed on a highway,

but no points may be assessed against the driving record of the operator of an

all-terrain vehicle. When the uniform traffic citation is used, the report of conviction

~~of utility terrain vehicle, or off-highway vehicle~~

^{plain} utility terrain vehicle, ^{plain}

1 shall be forwarded to the department. When the citation form under s. 23.54 is used,
2 the procedure in ss. 23.50 to 23.85 applies.

3 **SECTION 21.** 800.02 (2) (b) of the statutes is amended to read:

4 800.02 (2) (b) Except for parking violations, in traffic regulation actions in
5 municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu
6 of the citation form specified in par. (ag). In actions for violations of local ordinances
7 enacted in accordance with s. 23.33 (11) (am), ~~23.33 (12)~~⁷, or 30.77, the citation form
8 specified in s. 23.54 shall be used in lieu of the citation form specified in par. (ag).

9 **SECTION 22.** 885.235 (1m) of the statutes is amended to read:

10 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m)
11 or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the
12 time in question, as shown by chemical analysis of a sample of the person's blood or
13 urine or evidence of the amount of alcohol in the person's breath, is admissible on the
14 issue of whether he or she had an alcohol concentration in the range specified in s.
15 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol
16 concentration above 0.0 under s. ~~23.33 (4c) (a) 2.~~⁷ or 346.63 (7) if the sample was taken
17 within 3 hours after the event to be proved. The fact that the analysis shows that
18 the person had an alcohol concentration of more than 0.0 but not more than 0.08 is
19 prima facie evidence that the person had an alcohol concentration in the range
20 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an
21 alcohol concentration above 0.0 under s. ~~23.33 (4c) (a) 2.~~⁷ or 346.63 (7).

INS. 33-21 → 22 **SECTION 23.** 895.049 of the statutes is amended to read:

23 **895.049 Recovery by a person who fails to use protective headgear**
24 **while operating certain motor vehicles.** Notwithstanding s. 895.045, failure by
25 a person who operates or is a passenger on a motorcycle, as defined in s. 340.01 (32),

utility terrain vehicle, as defined in s. 23.33(1) ~~eng~~⁷ a ~~plan~~

an off-highway vehicle, as defined in s. 23.37(1)(f),

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SECTION 23

1 an all-terrain vehicle, as defined in s. 340.01 (2g), or a snowmobile, as defined in s.
2 340.01 (58a), on or off a highway, to use protective headgear shall not reduce recovery
3 for injuries or damages by the person or the person's legal representative in any civil
4 action. This section does not apply to any person required to wear protective
5 headgear under s. 23.33 (3g), 23.34(9) (b) 1., or 347.485 (1).

6 SECTION 24. 901.053 of the statutes is amended to read:

7 **901.053 Admissibility of evidence relating to use of protective**
8 **headgear while operating certain motor vehicles.** Evidence of use or nonuse
9 of protective headgear by a person, other than a person required to wear protective
10 headgear under s. 23.33 (3g), 23.34(9) (b) 1., or 347.485 (1), who operates or is a
11 passenger on a motorcycle, as defined in s. 340.01 (32), an all-terrain vehicle, as
12 defined in s. 340.01 (2g), an off-highway vehicle, as defined in s. 23.34(1) (f), or a
13 snowmobile, as defined in s. 340.01 (58a), on or off a highway, is not admissible in any
14 civil action for personal injury or property damage. This section does not apply to
15 the introduction of such evidence in a civil action against the manufacturer or
16 producer of the protective headgear arising out of any alleged deficiency or defect in
17 the design or manufacture of the protective headgear or, with respect to such use of
18 protective headgear, in a civil action on the sole issue of whether the protective
19 headgear contributed to the personal injury or property damage incurred by another
20 person.

21 SECTION 25. 938.17 (1) (intro.) of the statutes is amended to read:

22 938.17 (1) ~~TRAFFIC, BOATING, SNOWMOBILE AND ALL-TERRAIN VEHICLE, AND~~
23 ~~OFF-HIGHWAY VEHICLE VIOLATIONS. (intro.) Except for violations of ss. 342.06 (2) and~~
24 ~~344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when death or injury occurs,~~
25 ~~courts of criminal and civil jurisdiction have exclusive jurisdiction in proceedings~~

utility terrain vehicle, as defined in s. 23.33(1)(g), a plain

1 against juveniles 16 years of age or older for violations of ~~s. ss. 23.33 and 23.34~~, of
 2 ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic regulations, as defined in s. 345.20,
 3 and nonmoving traffic violations, as defined in s. 345.28 (1). A juvenile charged with
 4 a traffic, boating, snowmobile, ~~or all-terrain vehicle, or off-highway vehicle~~ offense
 5 in a court of criminal or civil jurisdiction shall be treated as an adult before the trial
 6 of the proceeding except that the juvenile may be held in secure custody only in a
 7 juvenile detention facility. A juvenile convicted of a traffic, boating, snowmobile, ~~or~~
 8 ~~all-terrain vehicle, or off-highway vehicle~~ offense in a court of criminal or civil
 9 jurisdiction shall be treated as an adult for sentencing purposes except as follows:

10 **SECTION 26.** 938.343 (9) of the statutes is amended to read:

11 938.343 (9) ~~ALL-TERRAIN VEHICLE OR OFF-HIGHWAY VEHICLE~~ SAFETY COURSE. If the
 12 violation is one under s. 23.33 or under an ordinance enacted in accordance with s.
 13 23.33 concerning the use of all-terrain vehicles, order the juvenile to attend an
 14 all-terrain vehicle safety course. ~~If the violation is one under s. 23.34 or under an~~
 15 ~~ordinance enacted in accordance with s. 23.34 concerning the use of off-highway~~
 16 ~~vehicles, order the juvenile to attend an off-highway vehicle safety course.~~

17 **SECTION 27.** 940.09 (3) of the statutes is amended to read:

18 940.09 (3) An officer who makes an arrest for a violation of this section shall
 19 make a report as required under s. 23.33 (4t), ~~23.34 (4t)~~⁷, 30.686, 346.635 or 350.106.

20 **SECTION 28. Nonstatutory provisions.**

21 (1) Notwithstanding the length of terms specified in section 15.347 (8) of the
 22 statutes, as created by this act, the governor shall appoint 3 of the initial members

23 of the off-highway vehicle council for terms expiring on June 30, 2014²⁰¹⁶, 3 of the initial

24 members of the off-highway vehicle council for terms expiring on June 30, 2015²⁰¹⁷, and

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1 3 of the initial members of the off-highway vehicle council for terms expiring on June

2 30, ~~2016~~ 2018

3 (END)

d-note

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0056/P1ins.
RNK:.....

INSERT ANALYSIS

Under current law, the Department of Natural Resources (DNR) administers the laws regulating the operation and registration of all-terrain vehicles (ATVs) and utility terrain vehicles (UTVs). This bill establishes requirements for the operation and registration of off-highway vehicles (OHVs) that are similar to the requirements that apply under current law to ATVs and UTVs. The bill defines an OHV as a ^(Sp)4-wheel drive vehicle that is capable of cross-country travel on natural terrain without the benefit of a road or trail. The bill excludes ATVs, UTVs, watercraft, and motorcycles from the definition of an OHV.

OHV trails

This bill requires DNR to encourage and supervise a system of OHV trails in the same manner that DNR is required under current law to encourage and supervise a system of ATV trails. The bill allows DNR to establish standards and procedures for certifying the designation of OHV trails. As under current law applicable to ATV trails, this bill allows towns, villages, cities, counties, or DNR to designate corridors through land that it owns or controls for use as OHV trails. The bill also requires DNR to prepare maps that identify each OHV trail in this state.

OHV registration

This bill creates two classes of OHVs. Under the bill, ^{the} a Class A OHV is an OHV that qualifies for registration by the Department of Transportation (DOT) under the laws that regulate the operation of vehicles on highways. ^(STET) A Class B OHV is generally ^(STET) one that may not be operated on a highway and that does not qualify for registration by DOT. With certain limited exceptions, the bill requires any person who operates an OHV on an OHV trail to register the OHV with DNR and to pay an annual registration fee. The fee for registration of a Class A OHV is \$50 and the fee for registration of a Class B OHV is \$100. The bill also requires a person who is an OHV manufacturer, dealer, distributor, or renter to register with DNR and obtain a commercial OHV certificate. Any person who registers an OHV with DNR must include the name and address of every owner of the OHV.

This bill authorizes DNR to appoint an agent to accept OHV registration applications on behalf of DNR in the same manner as DNR is authorized to appoint agents to register ATVs and UTVs. As with ATV and UTV registration, the agent is entitled to collect, and retain a portion of, a service fee for providing registration services.

Class B OHV equipment requirements

^(Sp) This bill prohibits any person from operating a Class B OHV unless the Class B OHV meets certain requirements. Those requirements include having a minimum of 4 wheels, being propelled by an electric or internal combustion engine, having a frame-mounted roll cage, having a permanently affixed blaze orange safety flag, and having permanently mounted seats that are equipped with safety belts. The bill also prohibits a person from manufacturing, selling, renting, or operating an OHV in such a manner that it exceeds specified noise limits.

a county, city, village, or town

OHV operation

The bill prohibits any person from operating an OHV on public property unless the person operates the OHV on an OHV trail. To operate an OHV on private property, the operator must obtain the consent of the property owner.

Under this bill, a person must obtain an operator's license from DOT to operate an OHV. Current law does not require a person to hold an operator's license to operate an ATV or UTV. The bill also prohibits a person from operating an OHV at a speed greater than 20 miles per hour.

Under this bill, a person is prohibited from operating an OHV on an OHV trail unless the person is at least 16 years old. The bill provides that if the operator is 16 or 17 years old, he or she must wear protective headgear and must be accompanied by another OHV that is operated by a person who is at least 18 years old. Finally, if the operator is a person born on or after December 31, 1993, he or she must hold a valid safety certificate to operate the OHV on an OHV trail. This bill requires DNR to establish a program of instruction on OHV laws and to issue certificates to persons who successfully complete the program. These requirements are similar to the requirements that apply under current law concerning programs of instruction on ATV and UTV laws.

This bill prohibits a person from operating an OHV while under the influence of an intoxicant and requires an OHV operator to submit to certain screening tests if a law enforcement officer has probable cause to believe that the operator is violating or has violated the law prohibiting the intoxicated operation of an OHV. These provisions are similar to the provisions in current law relating to the operation of an ATV or UTV while under the influence of an intoxicant.

OHV council

This bill creates an OHV council (council) consisting of 9 members who are knowledgeable in the recreational use of OHVs. The bill requires DNR to distribute any rule that it proposes that affects the operation of OHVs to each member of the council for review and comment. The bill also requires DNR to consult with the council on proposed changes for the succeeding biennium in the appropriations and laws that affect OHVs and requires the council to meet to review the provisions affecting OHVs that are included in each executive budget bill.

OHV grant program and damage claim program

This bill also requires DNR to establish a program to award grants to organizations that promote the operation of OHV vehicles in a manner that is safe and responsible and that does not harm the environment. An organization that receives a grant under this program must use the grant moneys to promote and provide support to the program of instruction on OHV laws. Under the bill, the grant program is funded by OHV registration fees.

Under this bill, DNR must also promulgate rules to establish a damage claim program to pay claims to owners of property damaged by the unauthorized operation of OHVs.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

④ Under this bill, only a person who is at least 16 years old may operate an OHV on an OHV trail.

operating an OHV

sp

ed

INSERT 2-6

1 SECTION ~~20.370~~ (3) (at) of the statutes is amended to read:
2 20.370 (3) (at) *Education and safety programs*. For programs or courses of
3 instruction under ss. 23.33 (5) (d), 23.37 (9) (d), 29.591, 30.74 (1) (a) and 350.055 (1).
4 All moneys remitted to the department under ss. 23.33 (5) (d), 23.37 (9) (d), 29.563
5 (12) (c) 2., 29.591 (3), 30.74 (1) (b), and 350.055 (1) shall be credited to this
6 appropriation.

History: 1971 c. 40, 95; 1971 c. 125 ss. 101 to 121, 522 (1); 1971 c. 211, 215, 277, 330, 336; 1973 c. 12 s. 37; 1973 c. 90, 100; 1973 c. 243 s. 82; 1973 c. 296, 298, 301, 318, 333, 336; 1975 c. 8, 39, 51, 91, 198; 1975 c. 224 ss. 7d, 7f, 7m, 17 to 19p; 1977 c. 29 ss. 181 to 234, 1657 (34); 1977 c. 274, 370, 374, 376, 377; 1977 c. 418 ss. 95 to 110, 929 (37); 1977 c. 421, 432; 1977 c. 447 ss. 42 to 44, 210; 1979 c. 34 ss. 199 to 322, 2102 (39) (a); 1979 c. 221; 1979 c. 361 s. 113; 1981 c. 1, 20, 86, 95, 131, 294, 330; 1981 c. 374 ss. 6, 7, 148, 150; 1983 a. 27 ss. 216m to 269, 2202 (23); 1983 a. 75, 181, 243, 397; 1983 a. 410 ss. 5m to 11, 2202 (38); 1983 a. 413; 1983 a. 416 ss. 1, 19; 1983 a. 426; 1985 a. 16, 22; 1985 a. 29 ss. 282d to 356, 3202 (26) (a), (39) (a), (c), (dm), (i); 1985 a. 46, 60, 65, 120, 202, 296; 1987 a. 27, 98, 110, 290, 295, 298, 305; 1987 a. 312 s. 17; 1987 a. 384, 397, 399, 403, 418; 1989 a. 31, 128, 284, 288, 326; 1989 a. 335 ss. 22nn to 30g, 89; 1989 a. 336, 350, 359, 366; 1991 a. 32; 1991 a. 39 ss. 326b to 394, 594c; 1991 a. 254, 269, 300, 309, 315; 1993 a. 16, 75, 166, 213, 343, 349, 415, 421, 453, 464; 1993 a. 490 ss. 18, 271; 1995 a. 27, 201, 225, 227, 296, 378, 459; 1997 a. 27, 35; 1997 a. 237 ss. 33 to 38d, 727g; 1997 a. 248; 1999 a. 9, 32, 74, 92; 1999 a. 150 s. 672; 1999 a. 185; 2001 a. 16, 56, 92, 108, 109; 2003 a. 33, 228, 251, 310, 314, 321, 327; 2005 a. 25, 286, 288, 347, 394; 2007 a. 20, 50, 97; 2009 a. 28, 42, 50, 175, 276, 365, 373; 2011 a. 32, 103, 118, 148, 151, 169, 208; 2011 a. 257 s. 56; s. 13.92 (1) (bm) 2.

INSERT 11-13

7 5. With any crossbow in his or her possession unless the crossbow is not cocked
8 or is unloaded and enclosed in a carrying case.
9 6. With any bow in his or her possession unless the bow does not have an arrow
10 ~~knocked~~.
11 7. With any firearm in his or her possession unless the firearm is unloaded or
12 is a handgun, as defined in s. 175.60 (1) (bm). This subdivision does not apply to a
13 firearm that is placed or possessed on ~~an all-terrain vehicle or utility terrain vehicle~~
14 ~~that is stationary, as defined in s. 167.31 (1) (fg).~~

~~that is stationary, as defined in s. 167.31 (1) (fg).~~
or off-highway vehicle that is
an

****NOTE: Subdivisions 5. ~~through~~^{to} 7. contain language that is different ~~than~~^{from} last session's version of this draft. I have changed the language so that it is consistent with current law under s. 23.33 (3) (eg), (er), and (3c). Is this O.K.?

INSERT 11-23

~~Subdivision~~ This paragraph was included in last session's version of this draft. It must ~~think it is unnecessary and should be deleted~~ because it is redundant in view of the prohibition contained in par. (b) above. ~~Do you agree?~~

in the next version of the draft because

and will result in conflicting provisions if retained

INSERT 12-2

****NOTE: I think ~~that~~ this provision is confusing. It implies, but does not say, that DNR must designate corridors in state forests for use as OHV trails. Do you want to require DNR to establish OHV trails in state forests?

INSERT 24-8

****NOTE: Do you want the draft to allow a person to satisfy the safety certificate requirement by demonstrating that he or she has a safety certificate from another state or Canada? See s. 23.33 (5) (b) 1. and 1m., stats.

INSERT 25-20

****NOTE: Do you want to include a reference to utility terrain vehicles in this subdivision?

INSERT 27-19

- 1 SECTION ~~24~~²⁷ 23.50 (1) of the statutes is amended to read:
- 2 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
- 3 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,
- 4 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),

1 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2),
2 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
3 administrative rules promulgated thereunder, violations specified under s. 280.98
4 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,
5 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),
6 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances
7 enacted by any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or
8 30.77.

History: 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 703b, 2102 (39) (f); 1981 c. 390; 1985 a 36; 1987 a. 27; 1987 a. 200 s. 4; 1989 a. 79, 284, 335, 359; 1991 a. 39, 97; 1993 a. 16, 243, 344, 349, 491; 1995 a. 27, 216, 227, 290; 1997 a. 35; 1999 a. 9; 2001 a. 56; 2003 a. 139, 276; 2005 a. 360.

9 **SECTION ~~23.50~~ (3)** of the statutes is amended to read:

10 23.50 (3) All actions in municipal court to recover forfeitures, plus costs, fees,
11 and surcharges imposed under ch. 814, for violations of local ordinances enacted by
12 any local authority in accordance with s. 23.33 (11) (am) 23.37 (12), or 30.77 shall
13 utilize the procedure in ch. 800. The actions shall be brought before the municipal
14 court having jurisdiction. Provisions relating to citations, arrests, questioning,
15 releases, searches, deposits, and stipulations of no contest in ss. 23.51 (1m), (3), and
16 (8), 23.53, 23.54, 23.56 to 23.64, 23.66, and 23.67 shall apply to violations of such
17 ordinances.

History: 1975 c. 365; 1977 c. 29, 305; 1977 c. 449 ss. 44, 497; 1979 c. 32 s. 92 (17); 1979 c. 34 ss. 703b, 2102 (39) (f); 1981 c. 390; 1985 a 36; 1987 a. 27; 1987 a. 200 s. 4; 1989 a. 79, 284, 335, 359; 1991 a. 39, 97; 1993 a. 16, 243, 344, 349, 491; 1995 a. 27, 216, 227, 290; 1997 a. 35; 1999 a. 9; 2001 a. 56; 2003 a. 139, 276; 2005 a. 360.

INSERT 30-7

18 **SECTION ~~30.29~~ (1) (b)** of the statutes is amended to read:

1 30.29 (1) (b) "Motor vehicle" includes a utility terrain vehicle, as defined in s.
2 23.33 (1) (ng), ~~and~~ an all-terrain vehicle, as defined in s. 340.01 (2g), and an
3 off-highway vehicle, as defined in s. 23.37 (1) (f).

History: 1981 c. 189; 1987 a. 374; 1991 a. 39; 2003 a. 118; 2009 a. 28, 377; 2011 a. 208; 2011 a. 260 s. 80.

INSERT 31-10

4 ~~SECTION 78.75~~ (1m) (a) 2m. of the statutes is amended to read:

5 78.75 (1m) (a) 2m. A person who uses motor vehicle fuel or an alternate fuel
6 upon which has been paid the tax required under this chapter for the purpose of
7 operating an all-terrain vehicle, as defined under s. 340.01 (2g), ~~or~~ a utility terrain ^{STET}
8 vehicle, as defined under s. 23.33 (1) (ng), ~~or an off-highway vehicle as defined under~~
9 amount of tax paid unless the all-terrain vehicle or utility terrain vehicle is ~~23.37~~
10 registered for private use under s. 23.33 (2) (d) or (2g).

History: 1973 c. 33; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 s. 329 (33); 1985 a. 29; 1987 a. 27; 1989 a. 31; 1993 a. 16, 437; 1995 a. 113, 408; 1997 a. 27, 291; 2011 a. 208.

****NOTE: Amend?

11 ~~SECTION 78.75~~ (1m) (a) 3. of the statutes is amended to read:

12 78.75 (1m) (a) 3. Claims under subd. 1. shall be made and filed. The forms shall
13 indicate that refunds are not available for motor vehicle fuel or alternate fuels used
14 for motorboats, except motorboats exempt from registration as motor vehicles under
15 s. 341.05 (20) and motorboats that are not recreational motorboats, or motor vehicle
16 fuel or alternate fuels used for snowmobiles and that the estimated snowmobile
17 motor vehicle fuel or alternate fuels tax payments are used for snowmobile trails and
18 areas. The forms shall indicate that refunds are not available for motor vehicle fuel
19 or alternate fuels used for all-terrain vehicles or utility terrain vehicles unless the
20 vehicle is registered for private use under s. 23.33 (2) (d) or (2g) and shall indicate
21 that estimated all-terrain vehicle or utility terrain vehicle motor vehicle fuel or

1 alternate fuels tax payments are used for all-terrain vehicle trails and areas. The
2 forms shall also indicate that refunds are not available for the tax on less than 100
3 gallons. The department shall distribute forms in sufficient quantities to each
4 county clerk.

History: 1973 c. 33; 1977 c. 29; 1979 c. 221; 1981 c. 390 s. 252; 1983 a. 189 s. 329 (33); 1985 a. 29; 1987 a. 27; 1989 a. 31; 1993 a. 16, 437; 1995 a. 113, 408; 1997 a. 27, 291; 2011 a. 208.

****NOTE: Amend?

INSERT 35-16

5 ~~SECTION 938.17~~^{*} 938.17 (1) (intro.) of the statutes is amended to read:

6 938.17 (1) TRAFFIC, BOATING, SNOWMOBILE, ALL-TERRAIN VEHICLE, ~~AND~~ UTILITY
7 TERRAIN VEHICLE, AND OFF-HIGHWAY VEHICLE VIOLATIONS. (intro.) Except for violations
8 of ss. 342.06 (2) and 344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when
9 death or injury occurs, courts of criminal and civil jurisdiction have exclusive
10 jurisdiction in proceedings against juveniles 16 years of age or older for violations of
11 ~~s. ss.~~ ss. 23.33 and 23.37, of ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic
12 regulations, as defined in s. 345.20, and nonmoving traffic violations, as defined in
13 s. 345.28 (1). A juvenile charged with a traffic, boating, snowmobile, all-terrain
14 vehicle, ~~or~~ utility terrain vehicle, or off-highway vehicle offense in a court of criminal
15 or civil jurisdiction shall be treated as an adult before the trial of the proceeding
16 except that the juvenile may be held in secure custody only in a juvenile detention
17 facility. A juvenile convicted of a traffic, boating, snowmobile, all-terrain vehicle, ~~or~~
18 utility terrain vehicle, or off-highway vehicle offense in a court of criminal or civil
19 jurisdiction shall be treated as an adult for sentencing purposes except as follows:

History: 1995 a. 77, 352, 448; 1997 a. 205, 239, ~~458~~; 1999 a. 9; 2001 a. 16; 2005 a. 190, 344; 2007 a. 97; 2009 a. 103, 208.

20 ~~SECTION 938.343~~^{*} 938.343 (9) of the statutes is amended to read:

1 938.343 (9) ~~ALL-TERRAIN OR VEHICLE~~, UTILITY TERRAIN VEHICLE, ~~OR OFF-HIGHWAY~~
2 ~~VEHICLE~~ SAFETY COURSE. If the violation is one under s. 23.33 or under an ordinance
3 enacted in accordance with s. 23.33 concerning the use of all-terrain vehicles or
4 utility terrain vehicles, order the juvenile to attend an all-terrain vehicle or utility
5 terrain vehicle safety course. If the violation is one under s. 23.37 or under an
6 ordinance enacted in accordance with s. ~~23.33~~ ^{23.37 (12)} concerning the use of off-highway
7 vehicles, order the juvenile to attend an off-highway vehicle safety course.

History: 1995 a. 77, 352, 448; 1997 a. 84, 183, 197, 198, 205, 248; 1999 a. 9, 32, 185; 2001 a. 16; 2005 a. 344; 2009 a. 103, 367; 2011 a. 32, 208.

INSERT 33-21

Section #. 895.043 (6) of the statutes is amended to read:

895.043 (6) LIMITATION ON DAMAGES. Punitive damages received by the plaintiff may not exceed twice the amount of any compensatory damages recovered by the plaintiff or \$200,000, whichever is greater. This subsection does not apply to a plaintiff seeking punitive damages from a defendant whose actions under sub. (3) included the operation of a vehicle, including a motor vehicle as defined under s. 340.01 (35), a snowmobile as defined under s. 340.01 (58a), an all-terrain vehicle as defined under s. 340.01 (2g), a utility terrain vehicle as defined under s. 23.33 (1) (ng), and a boat as defined under s. 30.50 (2), while under the influence of an intoxicant to a degree that rendered the defendant incapable of safe operation of the vehicle. In this subsection, "intoxicant" has the meaning given in s. 30.50 (4e).

History: 1995 a. 17; 1997 a. 71; 1999 a. 79; 2005 a. 155 s. 71; Stats. 2005 s. 895.043; 2005 a. 388 s. 216; 2009 a. 274; 2011 a. 2, 208; s. 35.17 correction in (6).

an off highway vehicle as defined under
s. 23.37 (1)(f)§

0056/P1dn

LRB-0339/P1dn
RNK/MGG:K.R.s
review

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

February 7, 2011

date

originally is a redraft of LRB 0-0339. It and utility terrain vehicles

This draft is in preliminary form. Because the drafting instructions for this proposal were given to me in the form of draft language, and because that language doesn't conform in some respects to our drafting conventions or to the manner in which our statutes are structured, I have structured this draft in a manner that is similar to the way the laws regulating all-terrain vehicles, ~~in Wisconsin~~ (including registration procedures) are structured. I discussed this issue with John Schnorr of the Wisconsin Off-Highway Vehicle Association, and he concurred with this approach. Please note the following comments and issues:

1. From the instructions for this draft, and from the meeting at your office, I have understood that your intention is to allow an off-highway vehicle (OHV) to be operated on public land *only* on designated trails. This means that, for example, an OHV could not be operated on frozen waters which, if navigable when not frozen, are public waters. I have also understood from the instructions that an OHV must be registered only for the purpose of operation on an OHV trail. Thus, the draft does not require an OHV to be registered if it is operated elsewhere (unless it is a Class A OHV that must be registered under ch. 341). However, under this draft, certain restrictions that apply to the operation of an OHV generally, for example equipment requirements, apply to the operation of an OHV on any property, public or private. If these basic assumptions are incorrect, please let me know and I will redraft accordingly.

2. I did not draft certain parts of the proposed language because that language was inconsistent with the instructions given at the meeting at your office, in which we discussed this proposal. For example, the proposal includes language authorizing an OHV to cross a public road right-of-way in certain circumstances, but at our meeting Mr. Schnorr indicated that there was no need for any provisions authorizing an OHV to cross a right-of-way. If, after reviewing the draft and the drafting instructions, you find that there are provisions from the proposal that still need to be added to the draft, please let me know and I will include them in the next version of the draft.

3. Your instructions included requirements for both civil penalties (forfeitures) and a criminal penalty (misdemeanor). I have assumed, for purposes of this draft, that you wanted to provide for civil penalties only with regard to violations that do not involve the intoxicated operation of an OHV.

4. Under current law, s. 20.370 (3) (at), stats, appropriates amounts remitted to DNR from various safety instruction program fees for the purpose of those programs. That

and not criminal penalties

is, the fees from all of these programs are not specifically identified for use by the given program for which the fee was remitted. I have included the safety program fees under this draft in this appropriation. Is this O.K. or do you want a separate appropriation for these OHV safety program fees? 7 d

INS. DN
6. Please note that under this draft, the forfeiture procedure under s. 23.50 to 23.85 in current law (including citation procedure) will apply to OHV violations. Is this O.K.?

7. 8. Your instructions requested that the forfeitures collected for OHV violations be used to fund OHV enforcement laws and environmental restoration. The Wisconsin Constitution requires all forfeitures to be credited to the school fund. If you want to provide funding for the requested purposes, you may want to impose a surcharge in addition to the forfeiture amount and then direct that the surcharge be used for the purposes requested.

9. Your instructions included language that specifically prohibits destruction of wetlands. Because current law already prohibits damage to natural resources and prohibits the operation of a motor vehicle in or on a navigable water (see ss. 23.095 and 30.29), I did not include this language in this draft.

generally
10. The provisions with regard to helmet requirements in this draft are based on those in the laws regulating ATVs. Is this O.K.?

11. The instructions included a requirement to create an OHV Council. The instructions also included a requirement that the OHV Council promulgate certain rules. Under Wisconsin law, councils do not have rule-making authority. If you wish to authorize the OHV Council to promulgate rules, you may wish to create an OHV Board rather than an OHV Council.

12. In addition to the issues raised above, the draft contains embedded notes that raise additional issues. Please review those notes as well.

other
If you have any questions, please feel free to call me.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Tim:
any the drafts have drafted
I have done the drafting of the OWI provisions. In reviewing these please note the following:

1. I have not included any specific penalties for operating while intoxicated. Please look at s. 23.33 (13) and let me know if you want to include any of those provisions that relate to intoxicated operation.

2. I have not included language to have violations under the OWI provisions count as violations for purposes of the regular motor vehicle OWI laws. This will be included in a later version of this draft once the other OWI penalties are finalized.

7
^ stats

3. The scope of the "intoxicated operation of an off-highway vehicle law" applies to more areas than just trails designated by DNR. See s. 23.34 (4j). This raises the inference that the legal operation of an off-highway vehicle that is registered with DNR, as opposed to DOT, is not limited to DNR designated trails. This may need redrafting once this issue* as to where on "public property" these DNR registered vehicles may be operated is clarified.

hyphen

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0056/P1dnins

RNK:.....

DN ins.

5. I recommend that the draft include a delayed effective date for certain provisions. Under the draft, funding for OHV trails comes from registration fees. The draft also specifies that these fees will fund state law enforcement operations and the grant program established in the draft. I don't know how long it will take to generate enough fees as a practical matter to fund all of these activities. Furthermore, will an OHV operator register an OHV if there are no trails on which to operate the vehicle? You may want to consider another funding source to provide initial funding for the construction of OHV trails. I recommend that you consult with Erin Probst at the Legislative Fiscal Bureau with regard to these funding issues.

6. Do you want the draft to include a Lac du Flambeau band registration program for OHVs that is similar to the program that applies to ATVs and UTVs under s. 23.33 (2g), stats.?

Insert # A

No 9

For ~~intoxicated~~ violations of the intoxicated
operation law, see ~~the~~ ~~no~~ ~~the~~ ~~the~~ item
10 in ~~the~~ Mary Gibson - Glass [↓] drafter [✓]
~~the~~ note ©

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0056/P1dn
RNK&MGG:eev&wlj:jf

November 6, 2012

This draft is a redraft of 2011 LRB-0339/P1. It is in preliminary form. Because the drafting instructions for this proposal were originally given to me in the form of draft language, and because that language doesn't conform in some respects to our drafting conventions or to the manner in which our statutes are structured, I have structured this draft in a manner that is similar to the way the laws regulating all-terrain vehicles and utility terrain vehicles (including registration procedures) are structured. I discussed this issue last session with John Schnorr of the Wisconsin Off-Highway Vehicle Association, and he concurred with this approach. Please note the following comments and issues:

1. From the instructions for this draft, and from the meeting at your office last session, I have understood that your intention is to allow an off-highway vehicle (OHV) to be operated on public land *only* on designated trails. This means that, for example, an OHV could not be operated on frozen waters which, if navigable when not frozen, are public waters. I have also understood from the instructions that an OHV must be registered only for the purpose of operation on an OHV trail. Thus, the draft does not require an OHV to be registered if it is operated elsewhere (unless it is a Class A OHV that must be registered under ch. 341, stats.). However, under this draft, certain restrictions that apply to the operation of an OHV generally, for example equipment requirements, apply to the operation of an OHV on any property, public or private. If these basic assumptions are incorrect, please let me know and I will redraft accordingly.
2. I did not draft certain parts of the proposed language because that language was inconsistent with the instructions given at the meeting at your office last session in which we discussed this proposal. For example, the proposal includes language authorizing an OHV to cross a public road right-of-way in certain circumstances, but at our meeting Mr. Schnorr indicated that there was no need for any provisions authorizing an OHV to cross a right-of-way. If, after reviewing the draft and the drafting instructions, you find that there are provisions from the proposal that still need to be added to the draft, please let me know and I will include them in the next version of the draft.
3. Your instructions included requirements for both civil penalties (forfeitures) and a criminal penalty (misdemeanor). I have assumed, for purposes of this draft, that you wanted to impose civil penalties, and not criminal penalties, for violations that do not

involve the intoxicated operation of an OHV. For violations of the intoxicated operation law, see item 1 in Mary Gibson-Glass's drafter's note.

4. Under current law, s. 20.370 (3) (at), stats., appropriates amounts remitted to DNR from various safety instruction program fees for the purpose of those programs. That is, the fees from all of these programs are not specifically identified for use by the given program for which the fee was remitted. I have included the safety program fees under this draft in this appropriation. Is this OK or do you want a separate appropriation for these OHV safety program fees?

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6. Do you want the draft to include a Lac du Flambeau band registration program for OHVs that is similar to the program that applies to ATVs and UTVs under s. 23.33 (2g), stats.?

7. Please note that under this draft, the forfeiture procedure under ss. 23.50 to 23.85 in current law (including citation procedure) will apply to OHV violations. Is this OK?

8. Your instructions requested that the forfeitures collected for OHV violations be used to fund OHV enforcement laws and environmental restoration. The Wisconsin Constitution requires all forfeitures to be credited to the school fund. If you want to provide funding for the requested purposes, you may want to impose a surcharge in addition to the forfeiture amount and then direct that the surcharge be used for the purposes requested.

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If you have any questions, please feel free to call me.

Robin N. Kite
Senior Legislative Attorney
Phone: (608) 266-7291
E-mail: robin.kite@legis.wisconsin.gov

Tim:

I have drafted the OWI provisions. In reviewing these please note the following:

1. I have not included any specific penalties for operating while intoxicated. Please look at s. 23.33 (13), stats., and let me know if you want to include any of those provisions that relate to intoxicated operation.
2. I have not included language to have violations under the OWI provisions count as violations for purposes of the regular motor vehicle OWI laws. This will be included in a later version of this draft once the other OWI penalties are finalized.

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215